

## **EXHIBIT B**

### **COOS BAY – NORTH BEND WATER BOARD**

#### **STANDARD TIMBER MANAGEMENT SERVICES PROFESSIONAL SERVICES AGREEMENT**

This is a contract of employment entered into effective the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between **Coos Bay – North Bend Water Board**, an Oregon municipal corporation (hereinafter referred to as Water Board) and \_\_\_\_\_ (hereinafter referred to as \_\_\_\_\_). The purpose of this agreement is to establish the mutual and respective responsibilities, terms, and conditions under which \_\_\_\_\_ will serve Water Board to perform various tasks, as assigned by Water Board, for the Water Board's \_\_\_\_\_ Timber Sale in the Pony Creek Watershed.

#### **RECITALS**

1. The Water Board is an Oregon municipal corporation and is owner of certain timber and timberlands in the Pony Creek Watershed, and is the designated manager of certain timber and timberlands owned jointly by the City of Coos Bay and City of North Bend in the Pony Creek Watershed.
2. \_\_\_\_\_ is a \_\_\_\_\_ providing forestry consulting services.
3. Water Board wishes to employ \_\_\_\_\_ as an independent contractor to provide such services as requested by the Water Board as set forth herein.
4. The Water Board's \_\_\_\_\_ Timber Sale encompasses Unit \_\_ as identified in the City of Coos Bay and Coos Bay-North Bend Water Board Watershed Management Plan, November 2012, and is situated in the \_\_\_\_ and \_\_\_\_ of Section \_\_, T25S, R13W, W. M., in the Pony Creek Watershed. A map is shown as Exhibit A.

Therefore, the parties agree as follows:

#### **1. RECITALS**

The above recitals are true and accurate and are incorporated herein by this reference.

#### **2. DUTIES AND RESPONSIBILITIES**

**2.1** \_\_\_\_\_ accepts employment with Water Board on the terms and conditions set forth in this agreement and any future task orders that may be subsequently agreed upon by the parties. \_\_\_\_\_ duties are as described below:

**2.1.1** Assist Water Board in selecting a unit for logging, target for market and draft a prospectus and invitation to bid for a timber sale, and draft a contract for the successful bidder.

**2.1.2** Assist Water Board in the following: perform unit layout including riparian and other buffers; cruise the timber; perform logging logistics; perform logging logistics; provide direction and oversight for road maintenance, road construction, and landing design; assist Water Board in Forest Practices Act and City of Coos Bay and Coos Bay – North Bend Water Board Watershed Management Plan compliance; assist Water Board in selecting the successful bid and timber purchaser for the timber sale; provide on-going administration of the timber sale and volume/payment rectification; specify clean-up and slash disposal.

**2.1.3** Pre-order seedlings of various species for replanting the logged area and assist Water Board in advertising for planting labor, planting contract compliance and inspection.

**2.2** Any additional work beyond that set out in the preceding paragraphs may be undertaken only upon an amendment to this Agreement, in writing, and a written notice to proceed issued by Water Board.

### **3. LENGTH OF EMPLOYMENT**

**3.1** The term of this agreement will be for a period not to exceed three years from the date of the execution by both Water Board and \_\_\_\_\_. Any additional work beyond the current scope of work will be in the form of written Task Orders. Each Task Order will establish the duration and additional term of this Agreement, as agreed upon by the parties, and in setting out any additional modifications to this Agreement.

### **4. COMPENSATION**

**4.1** For services rendered pursuant to this Contract, Water Board shall pay \_\_\_\_\_ a fee not to exceed \$\_\_\_\_\_. Fees shall be based on hourly work and standard hourly rates as shown on Exhibit B. \_\_\_\_\_ agrees that the total proposed fee for the work set forth in Section 2 above represents the maximum, “not to exceed” cost to the Water Board for the work to be performed, and any additional cost to the Water Board for any of the work described in Section 2 above must be first approved in writing by the Water Board.

**4.2** Water Board agrees to pay to \_\_\_\_\_ its reimbursable expenses, which shall be those expenses incurred directly for the project, including (but not limited to) transportation costs, meals and lodging (if required), computer services, telephone, printing and binding charges. Reimbursement for these expenses shall be on the basis of actual costs or current cost rates. Invoices and evidence of payment of such costs by \_\_\_\_\_ shall be submitted to Water Board before expenses are eligible to be reimbursed.

**4.3** In the event services of an outside technical or professional consultant are required, such services shall be billed to Water Board at their actual costs or current cost rates.

**4.4** In the event Water Board requests additional services from \_\_\_\_\_ which are not specified in this Agreement, Water Board will timely pay for all such services at \_\_\_\_\_'s standard rates, unless a different rate is agreed to by the parties in writing.

**4.5** Water Board shall pay \_\_\_\_\_ only after \_\_\_\_\_ has submitted an invoice to Water Board for the work performed and any materials used. The Water Board must approve the invoice, and payment to \_\_\_\_\_ shall be made within 30 days after the invoice has been submitted by \_\_\_\_\_ to Water Board, unless the Water Board objects to the amount of the invoice. All disputes over the amount charged by \_\_\_\_\_ to Water Board shall be resolved as provided in Section 18.

**4.6** In the event payments are not made by Water Board to \_\_\_\_\_ as provided herein, \_\_\_\_\_ shall be entitled to "Late Payment Charges" computed by a "Periodic Rate" of 1.5% per month on the unpaid balance due, unless otherwise provided by law of contract. All amounts more than 30 days past due will be subject to Late Payment Charges.

**4.7** In addition to any other rights either party may have for default, if Water Board fails to pay \_\_\_\_\_ within thirty (30) days after invoices are rendered, Water Board agrees that \_\_\_\_\_ shall have the right to consider such default in payment a material breach of this Agreement, and the duties, obligations and responsibilities of \_\_\_\_\_ under this Agreement may be suspended or terminated at \_\_\_\_\_ sole option.

**4.8** Water Board's payment of any amount to \_\_\_\_\_ shall not be considered acceptance or approval of any work or waiver of any defects therein by Water Board.

**4.9** Any adjustment in the amount of compensation to \_\_\_\_\_ shall be in the form of a written amendment to this Agreement, and become a part of this Agreement.

## **5. ADDITIONAL CONDITIONS OF AGREEMENT**

**5.1** \_\_\_\_\_ agrees to provide all tools or equipment necessary for the performance of the services contracted for herein.

**5.2** The parties contemplate that this agreement will include regular communication between \_\_\_\_\_ and Water Board staff.

**5.3** Any cost estimates provided by \_\_\_\_\_ will be based on experience and judgment, but since \_\_\_\_\_ has no control over market conditions or bidding procedures, \_\_\_\_\_ cannot warrant that bids or actual construction costs will not vary from these cost estimates.

**5.4** \_\_\_\_\_ shall be responsible, to the level of competency presently maintained by other practicing professional engineers, surveyors, foresters and land planners in the same type of work in Water Board's community, for the professional and technical soundness, accuracy, and adequacy of all designs, drawings, specifications, and other work and materials furnished under this Agreement. \_\_\_\_\_ makes no other warranty, expressed or implied.

## **6. INDEPENDENT CONTRACTOR STATUS**

**6.1** The Parties hereto mutually agree that \_\_\_\_\_ will be free from the direction and control of Water Board over the means and manner of providing the services contracted for herein, subject only to the right of Water Board to specify the desired results.

**6.2** The Parties hereto mutually agree that \_\_\_\_\_ has the authority to hire and terminate its own employees.

**6.3** As a condition of entering into this contract, \_\_\_\_\_ represents to Water Board as follows:

**6.3.1** \_\_\_\_\_ is an independently established business providing similar services to others.

**6.3.2** \_\_\_\_\_ is responsible for obtaining all assumed business registrations required by State law or local government ordinance in order to conduct its business.

**6.3.3** Federal and state income tax returns in the name of the business, or a business Schedule C, were filed for the previous year if \_\_\_\_\_ performed labor or services as an independent contractor in the previous year.

**6.3.4** \_\_\_\_\_ has performed services for two or more different persons or businesses within a calendar year.

**6.3.5** \_\_\_\_\_ assumes financial responsibility for services provided through appropriate insurance coverage(s).

## **7. INSURANCE**

**7.1** \_\_\_\_\_ shall, at its expense, obtain and maintain during the period of this Contract, in a form and with companies satisfactory to Water Board. \_\_\_\_\_ shall not commence work until they have furnished the Water Board with satisfactory proof of insurance coverage on a proper certificate. Insurance shall include:

**7.1.1** Employers Liability / Workers' compensation coverage's as required by law with a Waiver of Subrogation in favor of the Coos Bay - North Bend Water Board;

**7.1.2** General liability coverage for damages as a result of death or bodily injury (including personal injury) to any persons or destruction or damage to any property with limits not less than \$1 million each occurrence, \$2 million policy aggregate. Such coverage's shall include additional insured owners, lessors, or contractors (Form CG 2010 10/01 or its equivalent). The policy shall be endorsed to provide products and completed operations coverage and contractual liability coverage for liability assumed under this contract. All coverage shall be on an occurrence basis

and not on a claim made basis. Insurance shall be primary and without right of contribution from other insurance that may be in effect and without subordination;

**7.1.3** Automobile liability insurance as a result of death or bodily injury to any persons or destruction of or damage to any property arising out of the ownership, maintenance, or use of any owned, non-owned or hired motor vehicle with limits not less than \$1 million combined single limit;

**7.1.4** Excess/umbrella liability with not less than \$1 million each occurrence and aggregate that will provide excess limits of liability over the commercial general liability and automobile liability and Employers Liability/Workers' Compensation insurance described above. All excess/umbrella coverage shall be on an occurrence basis and not on a claim's made basis.

**7.1.5** Professional Liability Insurance, including errors and omissions coverage, with limits of not less than \$1 million per occurrence and \$1 million policy aggregate.

**7.2** \_\_\_\_\_ shall defend, indemnify, and save harmless Coos Bay – North Bend Water Board and its employees, its directors, officers, employees and agents against any and all loss, damage, liability, claims, demands, or costs resulting from injury or harm to persons or property (including, without limitation, \_\_\_\_\_ employees or property) to the extent arising out of or in any way connected with \_\_\_\_\_ negligent performance hereof. \_\_\_\_\_ activities shall be deemed to include those of subcontractors.

**7.3** Required General, Automobile and Excess/Umbrella liability coverages shall name the Coos Bay - North Bend Water Board, City of Coos Bay, and City of North Bend as additional insured. Such coverage shall be primary and non-contributory and shall contain a severability of interest provision in favor of the Water Board. All required coverage shall be with companies acceptable to the Water Board and shall provide a 30-day notice of any material change or cancellation. Required endorsements shall be attached to the certificate.

**7.4** If \_\_\_\_\_ policies lapse or are canceled at any time during the term of this Contract, Water Board shall have the right to immediately terminate all of \_\_\_\_\_ activities until such insurance requirements have been fully satisfied by \_\_\_\_\_.

**7.5** The insurance coverage required herein shall in no way limit \_\_\_\_\_ liability under this Contract.

## **8. INDEMNIFICATION**

**8.1** \_\_\_\_\_ shall indemnify, defend, save and hold harmless the Indemnified Parties (defined below) from and against any and all liability, demands, claims, losses, costs (including but not limited to attorneys' fees and, in the case of item (b) below, royalty payments) and expenses arising from or in connection with:

(a) claims for personal injury (including death) and/or property loss or damage to whomsoever or whatsoever occurring or arising in any manner out of or in connection with the Work, this Contract, or any act or omission of \_\_\_\_\_, its  
Professional Services Agreement – Page 5

directors, officers, agents or employees, or the presence of \_\_\_\_\_, its directors, its officers, agents or employees upon or about the property or premises, whether or not negligence on the part of any Indemnified Party may have caused or contributed to such injury, death, loss or damage; arising directly or indirectly out of or in connection with the performance by \_\_\_\_\_ of any of its obligations, operations or activities under this Contract, including, but not limited to any claims for injury to persons or property, nuisance, mechanics' and materialmens' liens, workers' compensation and unemployment taxes, fines and penalties and environmental damage, provided, however, that if, under the law applicable to enforcement of this Contract, an agreement to indemnify against the indemnitee's own negligence is invalid, then in that event \_\_\_\_\_ obligation to indemnify Water Board under this section shall be reduced in proportion to the negligence of Water Board, if any, which proximately contributed to such injury, death, loss or damage;

(b) any claim of infringement of patent rights arising from the use of any of the articles, materials, equipment or designs furnished in connection with the Work or named in this Agreement; and

(c) any claims, fines, penalties or other charge or loss arising from any alleged violation of any statute, code, or ordinance or regulation of the United States or of any state, county or municipal government that results in whole or in part, directly or indirectly, from the activities of \_\_\_\_\_ officers, agents, employees or subcontractors related in any way to this Agreement, or from any act or omission of \_\_\_\_\_, its officers, agents, employees or subcontractor contributing to such violation, regardless of whether such activities, acts or omissions are intentional or negligent, and regardless of any specification by Water Board without actual knowledge that it might violate any such statute, code, ordinance or regulation (these laws, ordinances and regulations, include, without limitation, all laws, ordinances and regulations relating to air, water, noise, solid waste and other forms of environmental protection, contamination or pollution, as well as all laws, ordinances and regulations relating to discrimination on the basis of disability).

**8.2** As used in this Section 8, the terms "Indemnified Parties" and "Indemnified Party" shall mean and include, collectively and singularly, (i) Water Board, (ii) any direct or indirect subsidiary of Water Board, (iii) any officer, director, Commissioner, employee, shareholder or agent of Water Board or of any of its direct or indirect subsidiaries and their divisions, directors, officers and employees.

**8.3** \_\_\_\_\_ further agrees to defend at its own expense any actions or proceeding brought against Water Board, or its officers, agents, servants, and employees, or any of them, on account thereof and to pay all expenses to satisfy all judgments which may be rendered against them or any of them in connection therewith, except that Stuntzner shall not be liable under this clause only if said liability of Stuntzner shall arise by reason of predominant negligence of the Water Board or any of its respective officers, agents, servants, or employees.

## **9. TERMINATION**

**9.1 Reasons for Termination.** \_\_\_\_\_ acknowledges that it is an at-will independent contractor and that the Water Board may terminate \_\_\_\_\_ employment with the Water Board at any time. The parties agree that either party may terminate this Professional Services Agreement – Page 6

Agreement by giving 30 days written notice to the other party.

**9.2 Notice of Termination.** Notice of Termination may be given in writing at least thirty days prior to the effective date of termination of this Agreement.

**9.3 Payment Upon Termination.** In the event that this Agreement is terminated by either party, Water Board shall forthwith pay to \_\_\_\_\_ for all work previously authorized and performed prior to the effective date of termination.

## **10. NOTICES**

**10.1** Any notice or other communication required or permitted to be given under this agreement shall be in writing and shall be mailed by Certified Mail, Return Receipt Requested, postage prepaid, addressed to the parties as follows:

Coos Bay – North Bend Water Board  
Rob Schab, General Manager  
P.O. Box 539  
Coos Bay, OR 97420

\_\_\_\_\_  
Address  
City, State, Zip

with a copy to:

James C. Coffey  
Attorney at Law  
P. O. Box 1006  
North Bend, OR 97459

**10.2** Any notice or other communication shall be deemed to be given at the expiration of the 2nd day after the date of deposit in the United States mail. The addresses to which notices or other communication shall be mailed may be changed from time to time by giving written notice to the other party.

## **11. ATTORNEY FEES**

**11.1** In the event any action, suit, arbitration or other proceeding shall be instituted by either party to this contract to enforce any provision of this Contract or any matter arising therefrom or to interpret any provision of this Contract, including any proceeding to compel arbitration, the prevailing party shall be entitled to recover from the other a reasonable attorney fee to be determined by the Court or Arbitrator(s). In addition to recovery of a reasonable attorney fee, the prevailing party shall be entitled to recover from the other costs and disbursements, including all costs of Arbitration and the Arbitrator(s) fees, and expert witness fees, as fixed by the Court or tribunal in which the case is heard.

**11.2** In the event any such action, suit, arbitration or other proceeding is appealed to any higher court or courts, the prevailing party shall recover from the other a reasonable attorney fee for prosecuting or defending such appeal or appeals, in

addition to the reasonable attorney fees in the lower court, or courts, or arbitration proceeding, such fee to be determined by the appellate court or lower court or arbitrator, as the appellate court may determine. In addition to recovery of a reasonable attorney fee on appeal, the prevailing party shall be entitled to recover from the other costs and disbursements and expert witness fees as fixed by the appellate court. All costs and disbursements which may be awarded pursuant to this paragraph shall bear interest at the maximum legal rate from the date they are incurred until the date they are paid by the losing party.

## **12. AMENDMENTS**

**12.1** This Agreement may be amended only by an instrument in writing executed by all the parties.

## **13. HEADINGS**

**13.1** The headings used in this Agreement are solely for convenience of reference, are not part of this Agreement, and are not to be considered in construing or interpreting this Agreement.

## **14. ENTIRE AGREEMENT**

**14.1** This Agreement sets forth the entire understanding of the parties with respect to the subject matter of this Contract and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

## **15. SEVERABILITY**

**15.1** If any provision of this Agreement shall be invalid or unenforceable in respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this agreement shall not be in any way impaired.

## **16. WAIVER**

**16.1** A provision of this Agreement may be waived only by a written instrument executed by the party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

## **17. GOVERNING LAW**

**17.1** This agreement shall be governed by and construed in accordance with the laws of the State of Oregon.



## **18. ARBITRATION**

**18.1** Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance or interpretation of this Agreement, shall be settled by arbitration in Coos County, Oregon, and any Judgment on the arbitration award may be entered in any court having Jurisdiction over the subject matter of the controversy.

**18.2** Any party asserting a claim arising out of or relating to this Agreement may make a written demand for arbitration. In this event, the parties shall agree to submit their controversy to binding arbitration before a single arbitrator. The arbitrator shall be an attorney licensed to practice law in the State of Oregon. If the parties cannot agree within 30 days to the selection of a single arbitrator after the election to arbitrate, either party may request that the selection of an arbitrator be made by a Judge of the Circuit Court of the State of Oregon for Coos County. The dispute shall be heard by the arbitrator selected within 90 days thereafter, unless the parties agree otherwise.

**18.3** The parties will pay their own costs of arbitration, and each will be obligated for one-half of the arbitrator's fee. The provision of Section 11 shall also apply to arbitration, and in the event of arbitration under the provisions of this Agreement, the prevailing party shall be awarded reasonable attorney fees and related costs.

**18.4** If arbitration is commenced, the parties agree to permit discovery proceedings of the type provided by the Oregon Rules of Civil Procedure both in advance of, and during recess of, the arbitration hearings. ORS 183.450(1) through (4), where applicable, shall control the admission of evidence at the hearing in any arbitration conducted hereunder, provided however no error by the arbitrator in application of the statute shall be grounds as such for vacating the arbitrator's award. Each party shall be entitled to present evidence and argument to the arbitrator. The arbitrator shall give written notice to the parties stating the arbitration determination and shall furnish to each party a signed copy of such determination and Judgment so the award may be entered in any court having Jurisdiction over the parties. The parties agree that all facts and other information relating to any arbitration arising under this contract shall be kept confidential to the fullest extent permitted by law.

**18.5** The parties agree that the arbitrator shall have no Jurisdiction to render an award and/or Judgment for punitive damages. The parties agree that the decision of the arbitrator shall be final and binding on the parties and a Judgment may be entered on the arbitrator's award. Unless otherwise inconsistent herewith, the provisions of ORS Chapter 36 shall apply to any arbitration hereunder. The duty to arbitrate shall survive the cancellation or termination of this contract.

**18.6** Service of process in connection therewith shall be made by certified mail. In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined shall be the existence of the agreement to arbitrate and the failure of one Party to comply with that agreement, and those issues shall be determined summarily by the court without a jury. All other issues shall be decided by the arbitrator, whose decision thereon shall be final and binding. There may be no appeal of an order

compelling arbitration except as part of an appeal concerning confirmation of the decision of the arbitrator.

**18.7** Neither Party shall institute any legal proceeding against the other to enforce any right hereunder or for breach hereof, except that either Party may institute litigation (i) to enforce its rights of arbitration hereunder (ii) to confirm and have judgment entered upon any arbitration award issued hereunder, and (iii) to stay the running of any statute of limitation or prevent any other occurrence (including, without limitation, the passage of time) which would constitute laches, estoppel, waiver or any other such legal consequence that suit is necessary to avoid, provided, however, that neither Party shall pursue litigation under item (iii) beyond such action as is necessary to prevent prejudice to its cause of action pending ultimate resolution by arbitration under this Section 18.

**18.8** If any dispute between the Parties arises from or in connection with any claim of litigation initiated by any third party (either as claimant, plaintiff, counterclaimant, or defendant/third Party plaintiff), then, unless the Parties agree otherwise, the resolution of that dispute under the arbitration provisions of this Section may at the option of either Party be deferred until the resolution of that third-party claim or litigation, provided, however that in the event of any such dispute in connection with a claim or litigation so initiated by a third party, either Party may at any time initiate arbitration under this Section 18 to determine prospective liability between the Parties upon facts which are stipulated, admitted solely for the purpose of arbitrating prospective liability, or not reasonably in dispute. The issue of whether any fact is "reasonably in dispute" under the preceding sentence shall be subject to mandatory arbitration hereunder upon the demand of either Party. In the event Water Board is made a party to such claim or litigation so initiated by a third party, Water Board shall select its own counsel and have complete control over all claim or litigation decisions concerning its participation in that claim or litigation, regardless of whether Water Board is required to, or in fact does, initiate a cross claim, counterclaim, or third-party claim under Subclause (iii) of Subsection 18 above, and regardless of \_\_\_\_\_ indemnity obligations under Section 18 above.

**IN WITNESS WHEREOF**, the parties have signed duplicate originals of this Contract to become effective on the date and year hereinabove mentioned.

**COOS BAY – NORTH BEND  
WATER BOARD**

\_\_\_\_\_

By \_\_\_\_\_  
Rob K. Schab, General Manager

By \_\_\_\_\_